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Attorneys for Appellees Dana Corporation, *et al.*

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

	x
In re:	:
	: Chapter 11
DANA CORPORATION, <i>et al.</i> ,	:
	: Bankruptcy Case No. 06-10354 (BRL)
Debtors.	:
	: Jointly Administered
	:
AD HOC COMMITTEE OF ASBESTOS	:
PERSONAL INJURY CLAIMANTS and	:
JOSÉ ANGEL VALDEZ,	:
	:
Appellants,	:
	: No. 1:08-CV-1037 (PAC)
vs.	:
	: Judge Paul A. Crotty
DANA CORPORATION, <i>et al.</i> ,	:
	:
Appellees.	:
	:

**MOTION OF APPELLEES TO DISMISS AS MOOT THE
 CONSOLIDATED APPEALS OF AD HOC COMMITTEE OF
ASBESTOS PERSONAL INJURY CLAIMANTS AND JOSÉ ANGEL VALDEZ**

Appellee Dana Corporation ("Dana") and its affiliated reorganized debtors (collectively, with Dana, the "Reorganized Debtors" or "Appellees"), pursuant to Rule 8011 of the Federal Rules of Bankruptcy Procedure, hereby file, together with the accompanying

Declaration of Corinne Ball dated March 14, 2008 (the "Ball Declaration"), this motion (the "Motion") to dismiss the above-captioned consolidated appeals filed by the Ad Hoc Committee of Asbestos Personal Injury Claimants (the "Ad Hoc Committee") and José Angel Valdez ("Valdez" and, together with the Ad Hoc Committee, "Appellants") on the ground that the appeals are equitably moot. In support of this Motion, the Reorganized Debtors respectfully represent as follows:

1. These appeals are from the Bankruptcy Court's order confirming the joint chapter 11 plan of reorganization for Dana Corporation and its affiliated Debtors. *See Order Confirming Third Amended Joint Plan of Reorganization of Debtors and Debtors in Possession* (entered December 26, 2007) (the "Confirmation Order").¹ Confirmation of that Plan enabled the Debtors — whose U.S. operations generated pre-tax losses of more than \$2 billion during the five years before entering chapter 11 — to: (a) resolve more than \$4 billion in prepetition obligations; (b) rationalize their corporate structure to mirror the operation of their businesses; (c) complete the implementation of Restructuring Initiatives that are expected to generate annual cost savings and revenue enhancements in excess of \$440 million; and (d) emerge from chapter 11 as solvent, with sufficient liquidity and profit margins to compete successfully in the still-troubled automotive supply industry.

¹ See Designation of Items to Be Included in Record on Appeal (Docket No. 2), filed by the Ad Hoc Committee (the "Ad Hoc Record"), R.58; Designation of Content of Record on Appeal (Docket No. 2; Case No. 1:08-cv-1038 (PAC)), filed by Valdez, R.30. All citations in the form "R.____" refer to the Ad Hoc Record, unless otherwise noted. All citations will refer to the record on appeal when possible. All docket citations herein refer to the docket of Case No. 1:08-cv-1037 (PAC), unless otherwise noted. For purposes of consistency and ease of reference, all citations to the Confirmation Order in this Motion will be to the slip copy issued by the Bankruptcy Court, available at In re Dana Corp., No. 06-10354 (BRL), 2007 WL 4589331 (Bankr. S.D.N.Y. Dec. 26, 2007). Capitalized terms not defined herein have the meanings given to them in the Third Amended Joint Plan of Reorganization of Debtors and Debtors in Possession (as amended, modified and supplemented, the "Plan"). See R.12.

2. Appellants represent holders of Asbestos Personal Injury Claims against the Debtors. The Plan did not alter the legal, equitable and contractual rights to which the holders of Asbestos Personal Injury Claims are entitled. Instead, those claims were reinstated by the Plan within the meaning of section 1124 of the Bankruptcy Code. Appellants asserted a laundry list of objections to confirmation of the Plan in the Bankruptcy Court. After a three-day evidentiary hearing (the "Confirmation Hearing"), the Bankruptcy Court overruled all of their objections and found that the assets of the Reorganized Debtors against which the Asbestos Personal Injury Claims were being reinstated "[are] more than sufficient to cover the range of reasonable forecasts" of the future costs for asbestos liabilities. In re Dana Corp., 2007 WL 4589331, at *15.

3. The Bankruptcy Court announced its decision to confirm the Plan at the conclusion of the Confirmation Hearing on December 12, 2007, and entered the Confirmation Order (after review of the proposed terms of the order by all parties) on December 26, 2007. Appellants filed their notices of appeal on January 3 and 4, 2008, respectively, but they did not seek (a) a stay of the Confirmation Order during the pendency of their appeals or (b) to expedite their appeals. Accordingly, on January 31, 2008 (the "Effective Date"), the Plan became effective in accordance with its terms, and the Reorganized Debtors took numerous irreversible steps to implement it, including:

- *Creation and Funding of New Dana Holdco.* A new holding company was created, New Dana Holdco, which received a new preferred stock equity investment of \$790 million from 24 different New Equity Investors.
- *Repayment of the DIP Loan and Borrowing under the new Exit Facility.* New Dana Holdco entered into a new \$2 billion Exit Facility with a group of lenders lead by Citigroup Global Markets Inc., Lehman Brothers Inc. and Barclays Capital (the "Exit Lenders"). The Exit Lenders are authorized to assign the loan to additional lenders. On the Effective Date or shortly thereafter, New Dana Holdco borrowed \$1.35 billion under the Exit Facility and used those proceeds and other cash to repay the amounts outstanding under its DIP Credit Agreement, which was then terminated and the liens securing it released.

- *Transfer of Operating Assets to New Dana Holdco and the Distribution of Cash and Common Stock to Creditors.* Dana transferred its operating assets to newly created subsidiaries of New Dana Holdco, which assets New Dana Holdco used as collateral to obtain the Exit Facility. To date, New Dana Holdco has issued approximately 95 million shares of New Dana Holdco Common Stock for the benefit of certain holders of general unsecured claims against the Debtors, including vendors, bondholders, employees, retirees and governmental agencies. Of the common stock shares issued, approximately 27.6 million shares were issued to an escrow account for future distribution to holders of allowed general unsecured claims, and more than 67 million shares have been distributed to more than 2,200 holders of allowed general unsecured claims. The Reorganized Debtors have made cash distributions exceeding (a) \$31 million to more than 3,000 different holders of allowed secured claims, allowed priority claims and allowed administrative claims, and (b) \$38 million to over 1,700 holders of Allowed Ineligible Unsecured Claims.
- *Termination of Retiree Benefits and Funding of VEBAs.* Pursuant to the Union Settlement Agreements, as of the Effective Date, the Debtors ceased to provide non-pension retiree benefits to more than 14,000 Union retirees and their surviving spouses and eligible dependents. Those individuals now receive their benefits from newly created VEBAs, which the Reorganized Debtors funded on or shortly after the Effective Date with more than \$732 million in cash. In addition, on the Effective Date, the Reorganized Debtors funded the remaining payments (roughly \$54 million) to the VEBA set up for the non-Union retirees whose benefits were terminated on July 1, 2007.
- *Collective Bargaining Agreements, Pension Plans and Executory Contracts.* The Debtors assigned their collective bargaining agreements to New Dana Holdco and its direct and indirect operating subsidiaries, thus novating Dana and the other relevant Debtors. The Reorganized Debtors also froze 30 different pension plans, which the Debtors had merged on December 31, 2006, and assigned these pension plans to Dana Limited. In the future, union employees with defined benefit pension plans will participate in defined contribution or 401(k) plans maintained by Dana Limited and the Steelworkers Pension Trust. The Reorganized Debtors also assumed and assigned to New Dana Holdco and its newly-created subsidiaries more than 2,000 executory contracts and unexpired leases necessary for continued operation of the businesses, novating Dana and other Debtors and fixing the rights of the nondebtor counterparties.

These steps, along with the myriad of other transactions implementing the Plan that are described in the accompanying Ball Declaration, have resulted in substantial consummation of the Plan. As a result of the failure of Appellants to obtain a stay of the Confirmation Order — indeed, even to seek such a stay — it is no longer possible, as a practical matter, for this or any other

court to undo the Restructuring Transactions that are the subject of these appeals. Accordingly, and for the reasons detailed more fully in Appellees' brief in support of this Motion and in opposition to the consolidated appeals filed contemporaneously herewith, the consolidated appeals must be dismissed as equitably moot.

Prayer for Relief

Accordingly, the Appellee Reorganized Debtors respectfully request that this Court grant this Motion and dismiss the consolidated appeals on the ground that they are equitably moot.

Dated: March 14, 2008
New York, New York

Respectfully submitted,

s/Corinne Ball

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 CONSOLIDATED APPEALS OF AD HOC COMMITTEE OF
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PLEASE TAKE NOTICE that upon the annexed Motion (the "Motion") of Dana Corporation and its affiliated reorganized debtors (collectively, "Appellees") to Dismiss as Moot the Consolidated Appeals of Ad Hoc Committee of Asbestos Personal Injury Claimants and José

Angel Valdez, the Appellees' brief in support of the Motion, and the Declaration of Corinne Ball in support of the Motion, Appellees will move this Court for an order dismissing the above-captioned appeals.

PLEASE TAKE FURTHER NOTICE that, pursuant to the order of this Court dated February 21, 2008 setting forth the briefing schedule for the above-captioned appeals, any opposing affidavits and answering memoranda shall be filed with the Court and served by March 28, 2008.

Dated: New York, New York
March 14, 2008

Respectfully submitted,

/s/ Corinne Ball
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